

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
Implementation of Section 621(a)(1) of)	
the Cable Communications Policy Act of 1984)	MB Docket No. 05-
311	
as amended by the Cable Television Consumer)	
Protection and Competition Act of 1992)	

COMMENTS OF *City of Evanston, Illinois*

These Comments are filed by the City of Evanston in support of the comments filed by the National Association of Telecommunications Officers and Advisors ("NATOA"). Like NATOA, the City of Evanston believes that local governments can issue an appropriate local franchise for new entrants into the video services field on a timely basis, just as they have for established cable services providers. In support of this belief, we wish to inform the Commission about the facts of video franchising in our community.

Cable Franchising in Our Community

Community Information

The City of Evanston is a home rule community with a population of over 74,000. Our franchised cable provider is Comcast. Our community has negotiated cable franchises since the early 1980's.

Our Current Franchise

Our current franchise began on November 2001 and expires on November 2011.

Our franchise requires the cable operator to pay a franchise fee to the City of Evanston in the amount of 5% of the cable operator's gross revenues as calculated in accordance with the Federal Cable Act.

We require the cable operator to provide the following capacity for public, educational, and/or governmental ("PEG") access channels on the cable system. We

currently have 1 channel devoted to public access; 2 channels devoted to educational access; and 1 channel devoted to government access.

Our franchise requires that our PEG channels be supported in the following ways by the cable operator: \$0.35 per subscriber per month pass through is given to the local media center for equipment fees

Our franchise contains the following institutional network ("I-Net") requirements: The cable provider provides an Institutional Network (I-Net that has bi-directional bandwidth capacity of 450 MHz. The provider installed operates and maintains its I-Net system including headend, and network components to connect all of the City-Owned buildings. We use our I-Net facilities to back-up our primary fiber capabilities and transfer data between buildings that do not have fiber connections.

Our franchise contains the following requirements regarding emergency alerts: The cable provider provides, services and maintains a public emergency transmission facilities to the City without charge. These facilities permit immediate transmission over the cable channels, including audio interruptions of all channels. The audio portion is operable from remote locations such as the local Civic Center. These emergency alert requirements provide an important avenue of communication with our residents in the event of an emergency. An example of when this function has been helpful is the following: Snow emergencies.

Our franchise contains customer service obligations, by which we are able to help ensure that the cable operator is treating our residents in accordance with federal standards and the terms it agreed to in its franchise.

Our franchise is fully built-out. It does require that the cable provider relocate it's cable underground in areas where the power company and the telephone company are relocation their cables underground.

Our franchise requires that the cable operator currently provide service to all areas of our community.

In order to ensure that our residents have access to current telecommunications technologies, our franchise contains the following rebuild or upgrade requirements: The cable backbone in the City of Evanston was upgraded to fiber over the past few years. The cable provider is required to employ accepted industry procedures to assure the selection of quality system components. No components shall be used that fail to meet the manufacturer's specifications. The cable provider shall perform quality tests to ensure that each component is fully functional and capable of meeting required standards.

Our franchise agreement contains a "most-favored-nations" or level playing field provision which states the following: The Franchise and the right it grants to use and occupy the public right-of-way shall not be exclusive and does not explicitly

or implicitly preclude the issuance of other franchises to operate cable systems or other communications. In the event that , after the effective date of this Franchise, the city grants a franchise to another person or persons to use and occupy the public right of way for the purpose of operating a cable system or other communications system, said grantee shall be required to provide all the payments, facilities, equipment and services required herein.

Our franchise contains the following insurance and bonding requirements: Grantee shall maintain public liability and property damage insurance including cable system operators insurance in the amount of \$1,000,000 per occurrence \$5,000,000 aggregate on account of bodily or personal injuries. Automobile insurance, Worker's compensation insurance, a performance bond, and a letter of credit.

The cable franchise grants the cable operator access to the public rights of way and compatible easements for the purpose of providing cable television service. Apart from the franchise, the cable provider is required to obtain a permit from the appropriate municipal office as well before it may access the public rights of way. No construction, reconstruction or relocation of the cable communications system or any part thereof, within the streets shall be commenced unless the required written permits have been obtained from the proper official.

The franchise agreement provides for the following enforcement mechanisms by which we are able to ensure that the cable operator is abiding by its agreement: Late fees charges or assessments can be required. The City has the authority to arrange for and conduct an audit of the financial records of the grantee for the purpose of verifying Franchise fee payments. The city may assess the Grantee and the Grantee agrees to pay to the City, liquidated damages in accordance with the Franchise. The City may revoke the franchise if a substantial breach occurs.

The Franchising Process

Under the law, a cable franchise functions as a contract between the local government (operating as the local franchising authority) and the cable operator. Like other contracts, its terms are negotiated. Under the Federal Cable Act it is the statutory obligation of the local government to determine the community's cable-related needs and interests and to ensure that these are addressed in the franchising process – to the extent that is economically feasible. However derived (whether requested by the local government or offered by the cable operator), once the franchise is approved by both parties the provisions in the franchise agreement function as contractual obligations upon both parties.

Our current franchise provides that changes in law which affect the rights or responsibilities of either party under this franchise agreement will be treated as

follows: Our Franchise agreement may be amended by executing a written amendment mutually agreeable to both parties.

While a franchise is negotiated by the local government as a contract, the process provides the cable operator additional due process rights, and consequent additional obligations on the local government. For instance: The city shall act within a reasonable time, and both parties are obligated to all applicable governmental laws.

Competitive Cable Systems

Our community was approached, but the provider chose not to enter into any formal discussions due to financial limitations since they went bankrupt soon after entering into talks with our City. We have actively sought out competitive providers, but we have not been successful yet.

Conclusions

The local cable franchising process functions well in the City of Evanston. As the above information indicates, we are experienced at working with cable providers to both see that the needs of the local community are met and to ensure that the practical business needs of cable providers are taken into account.

Local cable franchising ensures that local cable operators are allowed access to the rights of way in a fair and evenhanded manner, that other users of the rights of way are not unduly inconvenienced, and that uses of the rights of way, including maintenance and upgrade of facilities, are undertaken in a manner which is in accordance with local requirements. Local cable franchising also ensures that our local community's specific needs are met and that local customers are protected.

Local franchises thus provide a means for local government to appropriately oversee the operations of cable service providers in the public interest, and to ensure compliance with applicable laws. There is no need to create a new Federal bureaucracy in Washington to handle matters of specifically local interest.

Finally, local franchises allow each community, including ours; to have a voice in how local cable systems will be implemented and what features (such as PEG access, institutional networks or local emergency alerts, etc.) will be available to meet local needs. These factors are equally present for new entrants as for existing users.

The City of Evanston therefore respectfully requests that the Commission not reduce or interfere with local governments' authority over franchising or to otherwise impair the operation of the local franchising process as set forth under

existing Federal law with regard to either existing cable service providers or new entrants.

Respectfully submitted,

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